

REMARKS

Claims 1-39 are pending in this application. Claims 1-39 stand rejected. By this Amendment, claims 1, 4, 8, 15, and 16 have been amended. The amendments made to the claims do not alter the scope of these claims, nor have these amendments been made to define over the prior art. Rather, the amendments to the claims have been made to improve the form thereof. In light of the amendments and remarks set forth below, Applicant respectfully submits that each of the pending claims is in immediate condition for allowance.

The Examiner has rejected claims 1-39 under 35 U.S.C. § 112, second paragraph, as being indefinite as well as rejected claim 23 under 35 U.S.C. § 112, first paragraph, for a non-enabling disclosure. In accordance with the Examiner's remarks, and to more clearly define the invention, Applicant has amended the claims. As a result, Applicant respectfully requests that the Examiner withdraw the rejections under 35 U.S.C. § 112.

Claims 1-13 and 15-39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art ("AAPA") in view of U.S. Patent No. 6,421,335 ("Kilki"). Applicant respectfully requests reconsideration and withdrawal of this rejection.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or combine references to arrive at the claimed subject matter. The prior art references

must also teach or suggest all the limitations of the claim in question. See, M.P.E.P. § 706.02(j). A reference can only be used for what it clearly discloses or suggests. See, In re Hummer, 113 U.S.P.Q. 66 (C.C.P.A. 1957); In re Stencel, 4 U.S.P.Q.2d 1071, 1073 (Fed. Cir. 1987). Here, the references, whether taken individually or in combination, do not disclose or suggest the invention claimed by the Applicant.

The Office Action asserts that “with regard to claim 1, AAPA teaches the problem associated with a CDMA cellular system or in a first code set (orthogonal code, see page 25, line 21 of the written portion of the specification) allocated with a second, golden code (line 22 plus, describing gold and scramble codes, see also Figure 1, CS 1, CS2, etc.) wherein the first and second codes are multiplied together.” Office Action at 4. Applicant respectfully asserts that the cited portion of the specification is not the prior art but appears in a section entitled description of the preferred embodiment. As such, this is not part of the prior art that is being used to reject Applicant’s claims.

Among the limitations of claim 1 not present in the prior art is “allocating the second code to the first code set and multiplying said plurality of first codes by said second code allocated to generate a plurality of combined codes”. The Office Action asserts that the AAPA does not teach assigning priority to the combined code in allocating said combined code to said transmission signal based on said priority. The Office Action then attempts to cure that presumed deficiency using Kilkki. However, whether or not Kilkki cures its deficiency is irrelevant as Kilkki fails to disclose the above-recited deficiency in the claims. As such, Applicant respectfully submits that claim 1 is allowable over the cited art.

Additionally, the Office Action correctly asserts that the AAPA does not teach assigning priority to the combined code and allocating said combined code to said transmission signal based on said priority. The Office Action then includes the Kilkki reference to teach the solution of “guaranteeing an adequate signal-to-noise-ratio for existing connections” by calculating priority values based on a signal-to-noise ratio of the CDMA interface. However, priority based on signal-to-noise ratio does not disclose Applicant’s expressly recited limitation of assigning the priority based on the combined code and allocating the combined code to said signal based on the priority. As such, Applicant respectfully submits that for this reason, Kilkki does not cure the deficiency noted in the Office Action. As such, Applicant respectfully submits that the pending claims are in condition for allowance.

Claims 2-25 depend from, and contain all the limitations of claim 1. These dependent claims also recite additional limitations which, in combination with the limitations of claim 1, are neither disclosed nor suggested by Kilkky and are also believed to be directed towards the patentable subject matter. Thus, claims 2-25 should also be allowed.

Among the limitations of independent claim 26 not present in the AAPA and the cited reference is means for allocating said second code to said first code set and multiplying said plurality of first codes by said second code allocated generate a plurality of combined codes.

As discussed above, the Office Action asserts that this is part of the prior art as admitted by the Applicant. However, Applicant respectfully submits that this is recited in the description of the invention. As such, it is not prior art. The

Examiner then includes Kilky to show additionally features which, even if it were to show, does not describe Applicant's expressly recited claim limitations.

As such, Applicant asserts that claim 26 is allowable over the cited references.

Claims 27-39 depend from, and contain all the limitations of claim 26. These dependent claims also recite additional limitations which, in combination with the limitations of claim 26, are neither disclosed nor suggested by Kilky and are also believed to be directed towards the patentable subject matter. Thus, claims 27-39 should also be allowed.

The Office Action additionally rejects claims 1-26 under 35 U.S.C. § 103 as being obvious over the AAPA in view of U.S. Patent No. 5,530,917 to Anderson ("Andersson"). As discussed above, the AAPA does not disclose what is set forth in the Office Action. The Andersson reference was not included to cure the deficiencies discussed above but to show additional limitations. As such, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Applicant has responded to all of the rejections and objections recited in the Office Action. Reconsideration and a Notice of Allowance for all of the pending claims are therefore respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the

Application No.: 09/699,648

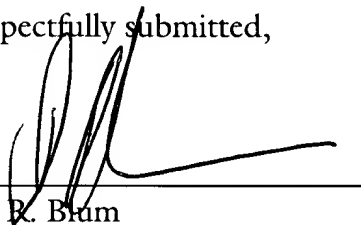
Docket No.: M1912.0018/P018

claims and to pass this application to issue.

If the Examiner believes an interview would be of assistance, the Examiner is welcome to contact the undersigned at the number listed below.

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Respectfully submitted,


By _____

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